86-474

NO. _____

Supreme Court, U.S.
FILED
SEP 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ALICE CLISSURAS,

Plaintiff-Appellant
and Petitioner,

v.

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees
and Respondents.

ON APPEAL AND PETITION
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ALICE CLISSURAS, pro se
Plaintiff-Appellant
and Petitioner
P. O. Box 1750
Brooklyn, NY 11201
(718) 875-6171

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals and the District Court abuse their discretion and power in dismissing plaintiff's complaint after reading and hearing plaintiff's claims, sets of facts, and documentation of:

a. Employment discrimination based on plaintiff's sex and religion, which discrimination was achieved by the fraudulent diminution of plaintiff's employment benefits;

b. Conspiracy on the part of all defendants to fraudulently conceal the causes of action, which conspiracy continues to date;

c. Deprivation of plaintiff's Constitutional due process rights, right to trial by jury, right to equal protection of laws, and right to counsel;

d. Defendants' breach of their contractual and fiduciary duties; and

e. Defendants' grossly negligent acts?

2. Was plaintiff systematically deprived of her Constitutional rights, as follows:

a. By the actions of all defendants, attorneys, and agencies (including the EEOC and the New York State Division of Human Rights) involved herein, none of whom allowed an investigation and a hearing of the claims and all of whom have persistently deprived plaintiff of her right to a jury determination;

b. By the actions of the defendants who have not denied plaintiff's claims, have not responded to the causes of action, and have not controverted the causes by show of any evidence or documentation; and

c. By the discretionary actions of the Court of Appeals and District Court, both of which Courts did not address the causes of action set forth above on page i with any specificity with the exception of claim "1.a."

to which an incomplete response was delivered by both Courts.

3. Did the Court of Appeals commit manifest and reversible errors as to the following:

a. The Court does not allow plaintiff any opportunity to counter its position due to its failure to render any opinion. The decision does not state clearly the basis for Title VII time bar. The inference is that the time period of 240 days began to run with plaintiff's first pension check. The decision does not state what the "other claims" are and why they are without merit.

b. The Court of Appeals dismissed plaintiff's complaint without sufficiently considering the causes of action and without considering defendants' failure to respond to the causes. Plaintiff documented the discriminatory and fraudulent calculation of her pension for 29 years instead of for the 34 years she

served and plaintiff documented the discriminatory and fraudulent crediting of her prior service. Defendants have at no time stated that plaintiff's pension was calculated correctly. They have not stated how the pension is calculated. Defendants have not stated that plaintiff's prior service was credited correctly. They have not stated how prior service should be credited. The Court did not require defendants to address the claims. The Court does not mention them in its decision.

c. The Court of Appeals stated in its decision that plaintiff's Title VII action is time barred without showing any consideration of the continuing discriminatory acts which are continuing to date and without considering defendants' fraudulent concealment of the causes of action. Defendants have not shown that plaintiff was informed of the causes of action at the time of her

retirement. Plaintiff has documented the points in time when she discovered the causes and documented the concealment of them by defendants. The Court did not consider the tolling of what it deemed to be Title VII time limitations on the basis of defendants' fraudulent acts.

d. The Court of Appeals, in its decision, did not show consideration of violations of plaintiff's civil rights, defendants' conspiracy to deprive plaintiff of her employment benefits, deprivation of plaintiff's Constitutional rights, and equal protection of laws, as to all of which the Statute of Limitations has not expired.

e. The Court did not render a formal opinion and did not allow the decision to be reported, which appears to be an interference with the reporting process.

f. The Court would not allow plaintiff usual time for oral argument at the March 26, 1986, hearing and required plaintiff to condense her argument to 5 minutes which forced plaintiff to include a summary of the case and arguments against nine defendants within a time limitation which was unreasonable. All of plaintiff's requests for usual time for oral argument were denied.

g. The attorneys for the defendants Board of Higher Education of the City of New York, City University of New York, New York City Technical College, Department of Insurance of the State of New York, and the Professional Staff Congress/CUNY did not make oral argument. Thus, plaintiff's employer, union, and the New York State overseer of the pension systems, against whom plaintiff documented discrimination, fraud, and violations of law, have not been heard on the record in either the

Court of Appeals or the District Court and plaintiff has not been allowed any opportunity to hear their arguments or to respond to said defendants.

h. The Judges of the Court of Appeals who heard the appeal did not ask plaintiff any questions and did not question opposing counsel as to the issues in this action.

i. There are no appellate papers on file in the Court of Appeals Record Room. The only papers on file are District Court papers. The decision of the Court of Appeals states that the appeal "came on to be heard on the transcript of record" from the District Court even though the transcript of the District Court was not transmitted as part of the Record on Appeal to the Court of Appeals.

j. There is no evidence of the Court's consideration of plaintiff's petition for Rehearing in Banc. The order denying the Petition was not

signed by the Court.

4. Was the Court of Appeals remiss in not considering the many reversible errors made by the District Court to plaintiff's damage? The errors include the following:

a. The District Court's failure to render an opinion and to give any reasons for dismissing the complaint. Plaintiff was never informed of any insufficiency which the Court may have deemed existed. The Court did not require the defendants to address the causes of action in their motions to dismiss the complaint. The Court did not take into account the defendants' misstatements of the facts, defendants' concealment of the causes of action, and defendants' failure to provide <u>any</u> proof or documentation.

b. At the November 14, 1985, hearing of the motions to dismiss, four attorneys representing the nine defendants were present. The only attorney who was

asked by the Court to orally argue was the one attorney of the four who was not qualified for Federal Court. This was the attorney for the City Defendants. Plaintiff was not allowed to hear and argue the motions of the other attorneys who represented six of the nine defendants.

c. The order dismissing the complaint, which was signed by the Court, improperly and incorrectly states that all motions were heard on November 14, 1985, when only one motion was heard. The order does not state all of plaintiff's Federal claims; it states only one. The order is in conflict with the decision on the record as to Federal claims and the Statute of Limitations.

d. Default was entered against Defendant Union on October 10, 1985, which default was never vacated. The docket entries record this incorrectly. The Union was in default, did not answer

the complaint, and did not make a motion to dismiss. The attorney for the Union appeared at the motion hearing but did not speak. The Court did not require the Union to respond to any of plaintiff's claims against it which are considerable and the complaint was dismissed as against the Union which was in default from October 10, 1985.

e. There is evidence that the District Court Judge spoke with and counseled attorneys for defendants. Not only did the Court not speak with plaintiff, but the plaintiff was also prevented from obtaining procedural information, to which she was entitled, due to the obstruction of the Court Clerks and Judge's law clerk.

5. Did the Court of Appeals and the District Court err as to the following:

a. Both Courts decided the Federal question of civil rights violations in a way in conflict with applicable

decisions of the Supreme Court, of other Courts of Appeals, and of the same Court of Appeals.

b. The failure of both Courts to specify the discriminatory act upon which it was argued and determined that the EEOC time limitation accrued and expired.

c. The failure of both Courts to state why the complaint was dismissed. Was the complaint dismissed for failing to state a claim upon which relief can be granted? Did both Courts regard the motion to dismiss as one for summary judgment since two attorneys submitted affidavits? Neither Court explained why the complaint did not include claims showing that the plaintiff is entitled to relief.

d. The failure of both Courts to consider the extraordinary steps taken by defendants to prevent plaintiff from retaining an attorney and the tactics

used to take advantage of plaintiff's limitations as to pension law and legal knowledge. Failure of the Courts to liberally construe a civil rights complaint for a pro se plaintiff.

e. The failure of the Courts to consider the extraordinary steps taken by the defendants to conceal the causes of action and the effects of the concealment on the time for action and the Statute of Limitations.

f. The refusal of the Retirement System and the College to give plaintiff a copy of her records. Plaintiff has documented some errors in said records. Since there has been no investigation and no discovery, plaintiff is deprived of the full knowledge of her records and of all the causes of action.

g. Plaintiff has not been granted a meaningful hearing to date of the issues herein by the defendant or by any agency or by the Courts.

h. The persistent and improper steps taken by the Courts and all attorneys herein to deprive plaintiff of her inviolate, Constitutional right to a trial by jury of the material issues of fact herein.

ALL PARTIES AND THEIR ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.,
U.S.C.A., 2d Cir.; Docket No. 85-9002
U.S.D.C., E.D.N.Y.: 85-CV-3180 (J.B.W.)

Plaintiff-Appellant, ALICE CLISSURAS, pro se
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PREFATORY STATEMENTS

I. LEGAL REPRESENTATION:

Plaintiff, Alice Clissuras, brings this entire action, including these appellate proceedings, pro se, due to the refusal of over 30 attorneys to represent her. When defendant Lewis Rosenberg, the attorney retained for plaintiff by defendant Professional Staff Congress/CUNY ("Union"), unilaterally withdrew his representation of plaintiff, she was forced to consult with over 30 attorneys in what resulted in vain attempts to retain an attorney. She sought a referral from the President of the New York Bar Association who referred her to a Surrogate Court attorney. Since said attorney lacked the needed expertise, he would not discuss the case with plaintiff. Plaintiff then expended considerable time researching the wrong pension laws based on the misinformation given to her by defendants. The District Court refused plaintiff's requests for legal representation. In view of the extraordinary steps taken by the

defendants to prevent plaintiff from gaining legal representation and pension and legal information, plaintiff pleads for the protection of the Court.

Plaintiff's pension information and legal knowledge are limited and plaintiff's forced pro se status places her at a disadvantage as opposed to the pension and legal expertise of the District Court, the Court of Appeals, the defendants, and the attorneys for the defendants, among whom are included the Attorney General of the State of New York and the Corporation Counsel of the City of New York. Moreover, all of the foregoing events had a substantial and material effect on the matter of time for all areas and proceedings involved herein.

II. NUMBER OF ISSUES:

The discriminatory acts committed against plaintiff have encompassed the many years of plaintiff's employment and have

spanned the many aspects of her employment compensation and employment benefits. Thus, the acts of discrimination, fraud, concealment, conspiracy, deprivation, and damage are so numerous that it is very difficult for plaintiff to account for and fully present all the wrongs within the time and page constraints imposed by the Courts. Plaintiff attempted to present all the areas in issue in her 33-page complaint. As to all subsequent proceedings, plaintiff attempts to present material issues and then follow with as many specific wrongs as time and space permit. Moreover, plaintiff attempts to group the wrongs in a manner to make for clarity of issues since there are so many areas and nine defendants with four legal representations.

The above is by way of explanation of the number of specific issues included in each proceeding and to account for the difficulty in including all wrongs in a particular paper or proceeding.

FORM OF PROCEEDINGS

Due to the close relationship between appeal and certiorari proceedings before the Supreme Court and due to plaintiff's pro se status, it is difficult for plaintiff to draw the line between the two.

On appeal, an appellant can file a writ of certiorari in addition to an appeal; or, instead of filing a petition for certiorari and a notice of appeal, the appellant may rely on the unrestricted jurisdiction of the Supreme Court to rule on certain questions as questions capable of being brought by appeal and as to the other questions as if contained in a petition for writ of certiorari. 32 Am.Jur.2d §§752, 753, 754.

Thus, plaintiff, in this paper, has attempted to fulfill the content requirements of both proceedings instead of filing a separate jurisdictional statement and writ, as is evident in such areas as Grounds of Jurisdiction, on page 4, infra.

The indulgence of the Supreme Court is requested as to the limitations in the form and content of plaintiff's papers which are attributable to plaintiff's lack of legal expertise.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

ALICE CLISSURAS,

Plaintiff-Appellant,
and Petitioner,

v.

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees,
and Respondents.

JURISDICTIONAL STATEMENT AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellant, Alice Clissuras, files

this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the order of the United States Court of Appeals for the Second Circuit affirming dismissal of the complaint herein, and that the Court should exercise jurisdiction in this case.

Further, petitioner, Alice Clissuras, respectfully prays that a Writ of Certiorari issue to review the order of the Second Circuit affirming dismissal of the complaint.

OPINIONS BELOW

The United States Court of Appeals for the Second Circuit affirmed the order of the United States District Court for the Eastern District of New York dismissing the complaint and the Second Circuit denied plaintiff's Petition for Rehearing in Banc.

No formal opinion was delivered by the Court of Appeals for the Second Circuit whose decision is herein sought to be

reviewed, and the Court is not allowing its decision to be reported or cited.

No opinion was delivered by the United States District Court for the Eastern District of New York, which Court ordered dismissal of the complaint.

JURISDICTION

The decision of the Court of Appeals was issued and entered on March 31, 1986, a copy of which appears in Appendix A, infra, pp. 1a-4a. The Journal Entry of said decision appears in Appendix A, infra, p. 5a. A timely Petition for Rehearing in Banc was denied on June 4, 1986 (Appendix A, infra, pp. 6a-7a).

The order of the District Court for the Eastern District of New York, dismissing the complaint, appears in Appendix A, infra, pp. 8a-10a. The decision of the District Court which was delivered on the record appears in Appendix A, infra, pp. 11a-13a. The Journal Entry of the Judgment of the District

Court appears in Appendix A, infra, at page 14a.

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from an action for employment discrimination and civil rights violations. The Order of the Second Circuit denying the Petition for Rehearing in Banc was entered June 4, 1986. A timely Notice of Appeal was filed on August 18, 1986, in the Second Circuit (Appendix C, infra, pp. 40a-41a). The jurisdiction of this Court is invoked under the provisions of 42 U.S.C. §§ 1984 and 2000e-6.

As to the Petition for Writ of Certiorari, the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the following Constitutional and Statutory provisions:

1. The Fifth Amendment to the United States Constitution, in relevant part:

> "* * * nor shall any person * * * be deprived of life, liberty, or property, without due process of law; * * *."

2. The Fourteenth Amendment to the United States Constitution, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

3. Chapter 1 of the Federal Rules, 28 U.S.C. §1343(a), Civil Rights (Appendix B, infra, p. 15a).

4. Chapter 21 of the Federal Rules, 42 U.S.C. §1981, Civil Rights: Equal Rights Under the Law (Appendix B, infra, p. 16a).

5. Chapter 21 of the Federal Rules, 42 U.S.C. §1983, Civil Rights: Civil

Action for Deprivation of Rights (Appendix B, infra, p. 16a).

6. Chapter 21 of the Federal Rules, 42 U.S.C. §1985(2), (3), Civil Rights: Conspiracy to Interfere with Civil Rights (Appendix B, infra, pp. 17a-18a).

7. Chapter 21 of the Federal Rules, 42 U.S.C. §1986, Civil Rights: Action for Neglect to Prevent (Appendix B, infra, p. 18a).

8. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq.:

a. §2000e, Definitions, appears in Appendix B, infra, pp. 19a-21a.

b. §2000e-2(a), Employer Practices, and 2(c), Labor Organization Practices, appear in Appendix B, infra, p. 22a.

c. §2000-4(a),(b),(g),(h), Equal Employment Opportunity Commission, appear in Appendix B, infra, pp. 23a-24a.

d. §2000e-5, Enforcement Provisions, appears in Appendix B, infra, pp. 25a-30a.

e. §2000e-6, Civil Actions by Attorney General, appears in Appendix B, infra, pp. 31a-32a.

f. §2000e-7, Effect on State Laws, appears in Appendix B, infra, p. 33a.

g. §2000e-8, Investigations, appears in Appendix B, infra, pp. 34a-36a.

h. §2000e-9, Conduct of Hearings and Investigations, appears in Appendix B, infra, p. 37a.

9. Federal Rules of Civil Procedure, Rule 12(b)(c), Defenses and Objections, appears in Appendix B, infra, p. 38a.

10. New York, C.P.L.R., §214(2), Actions to be Commenced within Three Years, appears in Appendix B, infra, p. 39a.

STATEMENT OF THE CASE

Plaintiff, a City University of New York professor, brought this action to recover for employment discrimination which resulted in the fraudulent diminution of her pension and employment benefits. The nine defendants herein include plaintiff's employer, pension system, union, attorney retained by union, and State governmental overseer of pension systems.

Plaintiff was employed at defendant New York City Technical College ("College") for 34 years from September 1, 1948, to September 1, 1982, the effective date of her retirement. The pivotal act of discrimination against plaintiff is the calculation of her pension for 29 years instead of for 34 years. All of the other acts of discrimination were designed to result in a 29-year pension, to conceal that it was a 29-year pension, and to deprive plaintiff of the pension benefits to which she is entitled

according to the Statutes of New York State. Plaintiff's pension is discriminatory and fraudulent on two counts: (1) it was calculated at the rate of 2-1/2% per year of service which is the rate used for pension members who have less than 30 years of service, and (2) the pension was calculated for 29 years which deprived plaintiff of 5 years of her service in the calculation of the pension. This was discriminatory since the pensions of similarly situated, male and non-Christian teachers who had 30 or more years of service were calculated for their full years of service and according to the special 30-year retirement allowance which by New York State Law is to be applied to such teachers and which was not applied to plaintiff's 34 years of service, thereby depriving her of over $10,000 annually in pension benefits. Plaintiff has not been given a copy of the pension plan and has not been given an accounting of her pension moneys. Plaintiff discovered well <u>after</u> her retirement that her pension

was based on discriminatory and fraudulent acts committed against her on the basis of her sex and religion. Plaintiff discovered after her retirement that male and non-Christian teachers who had 29 years of service were informed that if they withdrew their retirement applications and taught another year to complete 30 years of service, they would increase their pensions substantially. Plaintiff was never informed of the 30-year retirement allowance by any defendant and plaintiff did not know that her 34-year entitlement had been discriminatorily and fraudulently reduced to 29 years. This discriminatory practice has not ended. At the present time, plaintiff knows a male, non-Christian teacher who was to retire in 1985 and who is now instead completing his 30th year to retire in 1986 to earn the increased retirement benefit.

All of the defendants concealed and continue to conceal that there is a 30-year retirement allowance and that it should have

been applied to the calculation of plaintiff's pension. In addition, all defendants concealed and continue to conceal that plaintiff's pension was calculated for 29 years and not for 34 years. Plaintiff did not discover that her pension had been calculated for 29 years until July 17, 1985, when she received a communication from defendant City University of New York in which her service at defendant College was certified as having ended in 1977 instead of 1982 (Appendix, pp. 196-198*). This was the first time plaintiff learned that her pension had been calculated for 29 years. This discovery provided plaintiff with the information she needed to arrive at the improper pension allotment. Until July 17, 1985, plaintiff had no knowledge of the discriminatory and fraudulent use of 29 years for her pension,

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*In this paper, all Appendix page references are directed to Appendix for Plaintiff-Appellant which accompanied her Brief on Appeal to the Second Circuit. This Appendix is distinguished from Appendix A which appears herein, infra.

since in response to plaintiff's inquiries, defendants supplied plaintiff with 5 diverse and defective versions of her pension calculation. Three of the versions were supplied by the New York City Teachers' Retirement System ("Retirement System"), one by the Professional Staff Congress/CUNY ("Union"), and one by City University of New York (Appendix, pp. 119, 120, 121, 193, and Supplemental Appendix, p. 368*). The 5 versions were in the semblance of 34 years of service and were in the semblance of the pension formula found in the Administrative Code of the City of New York, Chapter B20. The defects in each of the 5 versions were used to conceal that the calculations were based on 29 years and not 34 years and improperly included such defects as an annuity deficit and Chapter B20 percentages. The defects were discovered by plaintiff over a period of time, the last

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*The Supplemental Appendix is joined to Plaintiff-Appellant's Reply Brief on Appeal to the Second Circuit.

defect being discovered on July 17, 1985. The defendants misled plaintiff into believing that the pension plan was in Chapter B20 and since plaintiff was prevented from retaining an attorney, she began the long and tedious researching of Chapter B20. As she studied it, the defects became gradually known to plaintiff. However, it was not until much later that plaintiff discovered that the pension plan which applies to City University faculty is found in New York State Law, C.P.L.R., Education Law, as amended, the Career Pension Plan, and not in Chapter B20.

Not one defendant to date has stated what the pension plan is; not one has controverted any of the above claims; and not one has produced any documentation or evidence or argument in disputation of the above claims. The Court of Appeals and the District Court have not required the defendants to make any statement regarding the calculation of plaintiff's pension; the Courts did not address the calculation of the pension

for 29 years instead of for 34 years; the Courts did not consider the continuing acts of discrimination which continued to July 17, 1985, and which continue to date; the Courts did not consider defendants' concealment of all of the causes of action which prevented discovery by plaintiff until July 17, 1985, and beyond; and the Courts did not consider plaintiff's documentation of her claims and the failure of defendants to provide even one shred of documentation as to any cause of action.

A second area of discriminatory acts committed by defendants is the crediting of plaintiff's prior service. According to New York State Law, C.P.L.R., Education Law, as amended, Prior Service, a member of the Retirement System receives automatic credit for all the years of employment served in the position during which she became a member of the Retirement System. This Law, as it appears on the forms of the Retirement System, provides, as follows:

"PRIOR SERVICE:

When you have rendered the equivalent of at least five full years of service after July 1, 1976 or after last joining, you are entitled to credit for previous service if retirement credit has previously been granted for such service in any public retirement system in New York. In order for such prior service to be credited, you must properly fill out page three of this application.

You are entitled to immediate credit for prior service as follows:

(a) Service that is otherwise creditable, which was rendered while you were ineligible for membership in a public retirement system or,
(b) If it was rendered during which employment you became a member of this System.
(c) Service credit that was transferred from any public retirement system in New York City or New York State."

The above Law was concealed from plaintiff and plaintiff was not given the form which included the above information. The Retirement System required plaintiff to purchase the first five years at the College as "outside service." This was discriminatory and improper in that plaintiff discovered after retirement that similarly situated male

and non-Christian teachers were automatically credited for their years at the College which included years during which they made no contributions to a pension system. Plaintiff was required to pay for the first five years of service; the amount was not credited to her Annuity Fund; and the 5 years were not used in the determination of her pension. In addition, due to misinformation plaintiff was not allowed to purchase one year of private school teaching which would have qualified her for a 35-year pension benefit.

The College, the Retirement System, City University, and the Union concealed the rules for the crediting of prior service prior to the time when the Retirement System required the purchase. All of the defendants concealed the rules after the purchase. Not one defendant responds to this claim; not one defendant states the Law for crediting prior service; not one defendant shows any evidence or documentation that plaintiff's prior service was credited properly; and the Courts

did not require the defendants to address this cause of action as they did not require the defendants to address the calculation of the pension. All of the defendants continue to conceal the pension plan and the rules for crediting prior service as all of their memoranda and briefs and papers in this action show.

The defendants acted in conspiracy to deprive plaintiff of her correct employment benefits. The conspiracy deprived plaintiff of the equal enjoyment of rights secured by law to all and violated plaintiff's civil rights on the basis of her sex and religion since the only teachers to plaintiff's knowledge who are receiving the 30-year pension allowance and who have had their prior service credited automatically are similarly situated male and/or non-Christian teachers.

Plaintiff's employer, Retirement System, and Union joined the conspiracy prior to plaintiff's retirement and the remaining

defendants joined the conspiracy after plaintiff's retirement. The conspiracy, which continues to date, is evidenced by (1) the defendants' concealment of the causes of action; i.e., the pension plan, the 30- and 35-year retirement benefits, and the rules for prior service; (2) the extraordinary measures taken by defendants to prevent plaintiff from gaining pension information, legal information, and legal representation; i.e., the giving of pension information individually and not widely to the large group of teachers and the refusal of over 30 attorneys consulted by plaintiff including the defendant attorney to represent her or to give her any information as to her rights and time limitations; and (3) defendants' misrepresentations as to pension and legal information; i.e., improper use of the New York City Administrative Code and misstatements of the New York State Pension Laws.

Plaintiff made many attempts to resolve the many issues herein to no avail.

The Retirement Board has never responded to any of plaintiff's communications directed to them. Plaintiff received a letter, dated March 27, 1985, from the Executive Director of the Retirement System, to the effect that a review of plaintiff's questions showed that plaintiff's retirement allowance had been properly and correctly computed according to applicable laws and that this letter ended any further response to plaintiff, since the Retirement System had clearly responded to all of her questions (Appendix, p. 122). This was the last discriminatory and fraudulent letter received from the Retirement System. All of plaintiff's questions have not been answered by the Retirement System. In his May 30, 1984, letter, the Executive Director states that the Chief Actuary of the System will be sending answers to questions regarding the pension (Appendix, p. 129, 1st ¶). The questions have not been answered to date and the Retirement System has not shown correct and proper computation of

plaintiff's pension.

Plaintiff received a letter, dated June 7, 1985, from the Superintendent of the Department of Insurance of the State of New York to the effect that all claims raised by plaintiff in her April 5, 1984, letter to the Insurance Department had been answered by the Retirement System, that all errors had been corrected, and that there would be no useful purpose served by a meeting with the Insurance Department (Appendix, p. 294). The Insurance Department never responded to plaintiff's April 5, 1984 letter. As indicated above, the Retirement System did not answer all of plaintiff's claims. And, all errors had not been corrected. Many errors have been brought to the attention of defendants, which errors have not been corrected to date. The June 7, 1985 letter was the last discriminatory and fraudulent written act from the Insurance Department which did not show any evidence of having investigated or reviewed plaintiff's claims.

Plaintiff filed with the Equal Employment Opportunity Commission ("EEOC") on June 20, 1985, which agency deferred to the New York State Division of Human Rights. Both agencies had obstructed plaintiff's earlier attempts to file with them. Both agencies have not, to date, investigated plaintiff's claims and both agencies have not, to date, conducted a hearing. The June 20, 1985, filing with the EEOC was timely as it was within 240 days of (1) the final discriminatory decision of the Retirement System that everything had been calculated correctly as set forth in its March 27, 1985 letter; (2) the final discriminatory decision of the Department of Insurance that everything had been calculated correctly as set forth in its June 17, 1985 letter; (3) the discriminatory certification by City University of New York of plaintiff's service as 29 years instead of 34 years as set forth in its communication of July 17, 1985; (4) the continuing discriminatory amount of plaintiff's pension; (5) the

discriminatory policy of the Retirement System as to which male and non-Christian teachers continue to be granted 30-year retirement allowances (p. 10, supra); and (6) the tolling of all time limitations due to the fraudulent use of 29 years for plaintiff's 34 years, the fraudulent requirement that her College service be purchased as "outside service," and defendants' tactics which prevented discovery of the causes of action herein and which elongated the time as to each proceeding herein.

FEDERAL QUESTIONS RAISED

Due to all of the aforegoing obstructions, misstatements, and concealments, plaintiff was forced to take legal action pro se which she did on August 26, 1985, with the filing of the summons and complaint in the United States District Court for the Eastern District of New York. The complaint raised Federal issues of employment discrimination based on sex and religion, civil rights

violations, conspiracy, fraud, and deprivation of Constitutional rights. The filing was within New York's three-year limitations period for liability created or imposed by statute [C.P.L.R., §214(2)], which limitation period has been applied by the Federal courts consistently in civil rights employment discrimination actions and which was applied by the Second Circuit in Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981), to Federal claims for deprivation of Constitutional rights under 42 U.S.C. §1983.

With the exception of defendant Union, the defendants made four motions for dismissal of the complaint. The attorney for defendant Rosenberg moved after service of answer which according to Fed. R. Civ. P., Rule 12(b) should have been moved before the answer. The attorneys for the City Defendants and Defendant Rosenberg used affidavits to support their motions which according to Fed. R. Civ. P., Rule 12(b)(c) should

have converted the motions to dismiss to motions for summary judgment and all parties should have been given reasonable opportunity to present all material pertinent to such a motion. At the November 14, 1985, motion hearing, only one attorney representing the three City Defendants orally argued and said attorney did not qualify for Federal court. Said attorney's oral argument was limited and replete with errors. Plaintiff was deprived of the right to hear and confront the arguments of all of the other defendants. The Court delivered a decision on the record which addressed only one of plaintiff's causes; namely, as a Title VII action it is untimely. The Court did not identify the discriminatory act by which it deemed untimeliness accrued. The Court did not consider or address plaintiff's documented claims of civil rights violations; defendants' acts of concealment, fraud, and conspiracy; and deprivation of plaintiff's Constitutional rights of due process and

equal protection of the laws. The Court did not deliver an opinion or reason for failure of plaintiff's 33-page complaint to state a set of facts that would entitle plaintiff to legal relief, which, according to Fed. R. Civ. P., Rule 12(b)(6), is the standard by which the complaint is measured for dismissal. The Court did not consider that the defendants did not rebut any of plaintiff's facts. The Court signed an order dismissing the complaint which order included errors as to the oral arguments, stating that all four motions were heard when only one was heard, and as to Federal claims, stating that Federal claims should be dismissed as time barred when the record states that Title VII was time barred. The order does not state all of plaintiff's Federal claims; it states only one, Title VII.

Plaintiff appealed to the Court of Appeals for the Second Circuit. The Record on Appeal from the District Court was incomplete; it did not include, for example,

the transcript of the motion hearing; and other errors, which had been brought to the Court's attention, were not corrected. The Second Circuit does not have any appellate papers on file and the docket is incomplete with omissions of papers and letters. The Second Circuit refused all of plaintiff's requests for usual time for oral argument which was heard March 26, 1986. Thus, plaintiff was forced to speed read her oral arguments in the 5 minutes which were allowed by the Court since the time restriction was unreasonable and did not allow for proper argument under any circumstances but especially under the circumstances herein of nine defendants and many issues. The attorneys for the City University defendants and the Defendant Union did not make any oral argument which means that they have not been heard on the record in any Federal court; which means that plaintiff's employer, City University, has not been required to respond to the false information it supplied as to

EDITOR'S NOTE

PAGE 27 thru END WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

plaintiff's promotional dates (Appendix, p. 195) and plaintiff's years of service (Appendix, p. 196); and which means that plaintiff's Union has not been required to respond to the discriminatory and fraudulent version of plaintiff's pension that it gave to her (Supplemental Appendix, p. 368). Plaintiff questions the reluctance of the aforesaid attorneys to argue their positions in any court which deprived plaintiff of the right to counter-argue them.

The attorney for Defendant Rosenberg spoke briefly during which she did not argue plaintiff's pension facts and claims but instead she argued that plaintiff did not state a claim under Title VII against Defendant Rosenberg. As is evident from plaintiff's papers and arguments, plaintiff joins defendant Rosenberg to her Federal claims on the basis of his conspiratorial acts which deprived plaintiff of her civil rights as evidenced by Defendant Rosenberg's concealment of the causes of action herein and of

plaintiff's legal rights.

The attorney for the City Defendants argued briefly during which he did not make any statement as to the discriminatory and fraudulent amount of plaintiff's pension and the crediting of her prior service. At no time has any defendant responded to or rebutted the pension facts. The attorney for the City Defendants argued that plaintiff's pleadings do not state a cause of action for conspiracy. Plaintiff's pleadings state sets of facts as to the concealment of the pension plan and the rules for prior service by each and every defendant and the refusal of over 30 attorneys to represent her. Concealment of the pension facts by all defendants who in this case are fiduciaries and pension experts could only have occurred as a conspiracy to deprive plaintiff of her pension benefits.

The City attorney then argued that plaintiff's Title VII claims did not have a basis for sex and religious discrimination

and that in any event Title VII claims were time barred. Plaintiff knows similarly situated teachers who have received or who are awaiting to receive 30-year benefits and similarly situated teachers who have been credited with prior service according to law and the only differences as to those teachers and plaintiff are sex and religion. Each and every defendant has failed to provide a non-discriminatory explanation for the apparently discriminatory pension which plaintiff is receiving; the defendants avoid this by not making any mention of the pension amount. They have never explained why plaintiff's pension was not calculated for 34 years of City service according to the New York State Pension Laws. The defendants have not rebutted plaintiff's evidence of sex-biased and religious-biased discrimination. The defendants have never explained why each and every one of them concealed and continue to conceal all pension and legal information. Accordingly, where a defendant has failed to rebut

a plaintiff's case for discrimination and failed to provide a nondiscriminatory explanation for an apparently discriminatory result, the Court has held that plaintiff's case for discrimination is not defeated. Melani v. Board of Higher Education of the City of New York, 561 F.Supp. 769 (1983). Moreover, in Melanie, the plaintiffs produced statistically significant evidence that female City University of New York professional instructional staff members were discriminated against on the basis of sex for the periods pre-Title VII and post-Title VII, which statistical evidence the Court held established sex-biased discrimination. In the instant case, plaintiff's years of service are included in the periods for which data was produced by the plaintiffs in Melanie, which data the Court held showed discrimination against female City University instructional staff. Further, the discrimination in Melanie showed continuing violations over the entire period and provides

for continuance of discriminatory acts in the future. Similarly, plaintiff's Title VII claims are not time barred based on analogy to Melanie and based on the six continuing discriminatory acts of defendants which plaintiff set forth herein on pages 21-22, supra.

In briefly arguing that plaintiff's Title VII claims were time barred, the attorney for the City Defendants did not identify the discriminatory act or acts which were time barred, as all the other defendants and the Courts have not identified said acts. If it is the discriminatory amount of the pension, then defendants' attorneys and the Courts would have to contend with the concealment of the pension information and the fraud involved in the pension calculation. Instead, all of them studiously avoid mention of the pension amount and credit for prior service. Thus, in effect, the conspiracy of concealment of causes of action is continued herein by the failure of all concerned to

identify the discriminatory acts by which the causes of action herein accrued.

The Second Circuit affirmed dismissal of the complaint with all the omissions attendant thereto. The Court did not deliver an opinion; the Court did not identify the discriminatory acts which were time barred; the Court did not mention plaintiff's claims of civil rights violations and conspiracy, fraud, and deprivations of Constitutional rights, which claims were established by sets of facts in the complaint. Moreover, all of said claims are not time barred and not Title VII claims and not Title VII restricted.

The Second Circuit stated in its order that it rejected plaintiff's argument that her pension checks constituted a continuing violation. The Court relied on United Airlines Inc. v. Evans, 432 U.S. 553, 559 (1977), to show that an alleged discrimination is not a continuing violation merely because it has continuing adverse effects on an employee's benefits. The facts and the

holding in Evans have no application to plaintiff's case. In Evans, the claimant was using a present nondiscriminatory act (her rehiring in which she was treated the same as all others) to revive the discrimination shown her when she was fired years earlier. In Freude v. Bell Telephone Company of Pennsylvania, 438 F.Supp. 1059 (1977), Justice Stevens, at p. 1061, clearly states the holding of Evans and its application, as follows:

> "* * * it is plain that the basic holding of Evans is that a current nondiscriminatory policy will not revive a time-barred act of discrimination even though such policy gives present effect to the past act of discrimination." (Emphasis added.)

Plaintiff, in the instant case, is not using a nondiscriminatory act to revive an earlier claim. Discrimination against plaintiff has not ended. Male and/or non-Christian teachers are still being granted pension benefits which continue to be denied to plaintiff. Plaintiff documented the continuing acts of discrimination

to which she refers herein on pages 21-22, supra. The Second Circuit did not consider these with one exception, plaintiff's monthly pension check, which the Court rejected as a continuing act based on Evans. As indicated above, Evans does not defeat the continuing wrong of the monthly check. The Federal courts have consistently held discriminatory amounts of paychecks to be continuing wrongs. In Freude, supra, at p. 1060, the Court identified the last paycheck as the last discriminatory occurrence. (Emphasis added.) In the instant case, the Court did not give any reasons for not considering the additional continuing violations which were documented by plaintiff and which continued to July, 1985.

SUBSTANTIALITY OF FEDERAL QUESTIONS AND REASONS FOR GRANTING THE WRIT

POINT I: The decisions of the Second Circuit and Eastern District Courts dismissing the complaint are improper

Plaintiff's presentations of QUESTIONS PRESENTED FOR REVIEW (herein, pp. i - xiii supra) and STATEMENT OF THE CASE (herein, pp. 8-22, supra) are necessarily lengthy due to the large number of acts of violation, deprivation, and error committed by all opposing parties, attorneys, agencies, and Courts, herein. Since said two sections stand on the facts, they represent the strongest argument for establishing: (1) that the complaint was improperly dismissed since it made claims upon which relief could be granted and it included many material issues of fact; (2) that the Courts failed to give sufficient and/or any consideration to defendants' concealment, fraud, and conspiracy, to defendants' failure to rebut even one pension fact and to present even one piece of

evidence, and to defendants' memoranda and briefs which were riddled with errors and omissions; and (3) that extraordinary, overt, and persistent steps have been taken herein to deprive plaintiff of a hearing of her claims and of her Constitutional rights to equal protection of laws, to counsel, and to trial by jury. Relevant Federal Court decisions which have consistently supported plaintiff's position that the complaint was dismissed improperly follow.

The Second Circuit has held that to withstand a motion directed only to the face of the complaint, the only pleading requirement under Rule 12(b) is a "short and plain statement of the claim showing that the pleader is entitled to relief." The Court also stated as a reason for not granting dismissal the failure of the District Court to state why it concluded that the complaint showed no claim upon which relief could be granted and that the brief for dismissal also did not do so. See Dioguardi v. Durning,

139 F.2d 774, 775 (1944). In the instant case, neither Court rendered an opinion or explanation indicating reasons for plaintiff's failure to state claims upon which relief could be granted. Plaintiff in this action has been prevented by the Courts from arguing against their positions which are unstated.

In motions to dismiss, the Courts have held that where afridavits are considered, the motion to dismiss is converted to one for summary judgment and the court should give all parties notice of such conversion. Moreover, since summary judgment is an adjudication on the merits, the court should allow additional submissions on the issues. See Fed. R. Civ. P. 12(b); Beacon Enterprises, Inc., v. Menzies, 37 Fed.R.Serv.2d 337 (2d Cir. 1983). In the instant case, it is not at all clear whether the complaint was dismissed for failure to state a claim showing that pleader is entitled to relief or whether the Courts converted to summary judgment

without giving notice. The attorney for the City Defendants and the attorney for the Defendant Attorney Rosenberg submitted affidavits in support of their motions to dismiss the complaint. The Second Circuit, in its decision, stated, "3. We have carefully examined Clissuras's other claims and find them to be equally without merit." (Appendix A, infra, p. 4a) The District Court, in its decision, stated, "The Court having determined on the record that plaintiff's federal claims should be dismissed on the merits as barred by the statute of limitations; * * *." (Appendix A, infra, pp. 9a-10a) In their decisions, both Courts do not mention what the other Federal claims are and do not deliver opinions or reasons for findings of no merit. As to the District Court, the record does not show that the Court ruled that plaintiff's Federal claims are time barred. (Appendix A, relevant pages of record, infra, pp. 11a-12a) Since the Courts considered the Affidavits in Support of Motions, the motions should have

been converted with notice and the parties allowed to submit further on the issues. Moreover, since the Affidavits in Support of Motions did not controvert the allegations of the complaint in any manner, there was no proper basis from which the District Court could have determined that plaintiff failed to state a claim on which relief could be granted. For the purposes of the motion, the attorney for the City Defendants stated in the Affidavit in Support, "plaintiff's allegations are deemed true." The attorney for the City Defendants does not mention plaintiff's other Federal claims and does not, therefore, controvert them, as the attorney does not mention the pension plan and the rules for crediting prior service and does not, therefore, controvert them. If plaintiff's allegations are deemed true, then the claims of civil rights violations, concealment, conspiracy, fraud, and deprivations of Constitutional rights are claims on which relief can be granted since all of those

claims are not under Title VII time bar and instead the Federal courts have consistently applied the appropriate statute of limitations of the state in which the Federal court is located which in the instant case is New York's three-year limitations period for liability created or imposed by statute [C.P.L.R., §214(2)]. See Pauk v. Board of Trustees of City University of New York, supra; Alston v. Allegheny Ludlum Steel Corporation, et al., 465 F.Supp. 171 (1978); Keyse v. California Texas Oil Corp., 590 F.2d 45 (1978); Simmons v. South Carolina State Ports Authority, 495 F.Supp. 1239 (1980).

On a motion to dismiss, the Federal courts have consistently held that pro se complaints are held to less stringent standards than pleadings prepared by attorneys and that pro se plaintiffs are to be given opportunity to amend to overcome any deficiency. See Gillespie v. Civiletti, 629 F.2d 637 (C.A.Wash. 1980). In the instant

case, plaintiff was not allowed any opportunity to remedy any insufficiency which the Courts may have deemed existed. Plaintiff, moreover, was denied responses to procedural information requested by her. There is evidence that the District Court counseled or spoke with opposing attorneys, one of whom, the attorney for Defendant Union, stated in his Brief for Defendant-Appellee Union for the Second Circuit proceedings, on page 3 therein, "Counsel for the union also appeared on November 14, 1985 because he was requested to do so by Judge Weinstein's law clerk * * *." The attorney for Defendant-Appellee Union did appear at the November 14 hearing; however, he made no statement, no argument, and no reference to the default status of the Defendant Union. He did not make a motion to dismiss and he did not serve an answer. The said law clerk, in the case of plaintiff, would not give her any information such as to plaintiff's questions on the settlement of the order. Tactics

were used by all herein to take advantage of plaintiff's pro se status.

POINT II: The decisions of the Second Circuit and Eastern District Courts holding that plaintiff's Title VII claims are time barred are in conflict with decisions of Federal courts

Both Courts do not identify the discrete discriminatory act by which it was held that plaintiff's Title VII claims are time barred. Both Courts do not consider that the discrimination of which plaintiff complains is continuing and that male, non-Christians are still receiving pension allowances based on a 30-year benefit. Plaintiff's pension was calculated for 29 years to avoid the use of a 30-year pension calculation and plaintiff's prior service was credited in violation of the law cited herein on page 15, supra. These two acts of discrimination were concealed from plaintiff by all defendants and plaintiff's discovery of the use of 29 years in place of 34 years occurred

on July 17, 1985. In addition to not considering the continuing discriminatory acts, the Courts did not consider the defendants' concealment of the pension facts which concealment is apparent in all the letters, affidavits, memoranda, briefs, and documentation used herein.

In cases where wrongful concealment of facts is alleged, the Court will estop the party responsible for such wrongful concealment from asserting as a defense the statute of limitations. In Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231 (1959), Mr. Justice Black stated:

> "* * * no man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity and has frequently been employed to bar inequitable reliance on statutes of limitations." 359 U.S. at 232-233.

A corollary of the principle expressed in Glus is the equitable modification of the statute of limitations according to which the statute does not begin to run until the facts

supporting a cause of action are apparent. See Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924 (1975). The Court held that the period for filing Reeb's claim of employment discrimination would not begin to run until the facts of the discrimination were apparent to her since her employer misled her as to the reasons for terminating her employment. The Court of Appeals in the opinion stated:

> "* * * subtle means of illegal discrimination, because of their very nature, are unlikely to be readily apparent to the individual discriminated against. Indeed, employers that discriminate undoubtedly often attempt to cloak their policies with a semblance of rationality and may seek to convey to the victim of their policies an air of neutrality or even sympathy. These tendencies may extend to the giving of misleading or false information to the victim, as is alleged in the present case." 516 F.2d at 931.

In the case at bar, members are informed individually of their pension benefits. Thus, when discrimination occurs, it is unlikely to be apparent to the individual discriminated against, as in the case of plaintiff. The

defendants concealed the discrimination in the semblance of propriety by using forms which gave the impression that the same calculation was used for all members in similar circumstances.

The Courts in their decisions did not make any reference to the continuing acts of discrimination which continue to date and to the tolling of the limitations until the discovery of the facts of the discrimination.

> POINT III: The above statements of facts, claims, and arguments are not intended as a complete statement of all the facts, claims, and arguments. Plaintiff rests on the record as to the remaining items.

Plaintiff's claims are many as can be seen in her 33-page complaint. Plaintiff presented an Appendix of 366 pages on her appeal to the Second Circuit in which Appendix, plaintiff documented all correspondence with defendants, all errors in plaintiff's accounts, all misstatements as to her pension and service, and all misstatements as to the

pension laws. Plaintiff rests on the record as to the remaining claims herein.

For reasons of concern, however, plaintiff sets forth two items of remaining claims, as follows:

(1) Throughout this entire matter, plaintiff has been deprived totally of her Constitutional rights of due process and equal protection of laws. Defendants simply did not respond or refused to give plaintiff her records or refused to allow her to see her records or refused to meet with her or misstated the law which misstatements came from fiduciaries, pension experts, and/or legal experts. There is no evidence that the issues herein have been investigated by any agency, which includes the New York State Division of Human Rights, the E.E.O.C., the New York State Insurance Department, the Attorney General of the State of New York, the Corporation Counsel of the City of New York, and the Comptrollers of the City and State of New York. To date, there has been no hearing

on the issues herein at any stage. The enforcement provisions of Title VII of the Civil Rights Act, §2000e-5 (Appendix B, infra, pp. 25a-30a) have not been observed by those required therein to do so, which in plaintiff's case also includes the District Court. At the District Court and Second Circuit Court hearings more than half of the defendants did not offer any oral arguments. The defendants in their correspondence simply stated that everything had been done correctly without going further. The Courts dismissed major Federal claims with a simple statement to the effect that plaintiff's other claims have no merit. Plaintiff's claims are documented and the defendants do not offer any evidence. The Courts do not render an opinion or reason for the decisions. Plaintiff has been deprived of her rights.

(2) No one herein seemed to take note that plaintiff could not retain an attorney. When attorneys refuse to represent an aggrieved, they are in effect depriving

the aggrieved of a right to trial by jury. In plaintiff's case, the defendants prevented plaintiff from discovering any pension and legal information. Then, they relied on the defense of Title VII time bar, disregarding the fact that their concealments and obstructions had material effects on time as to all matters herein. Under Title VII, §2000e-5(f)(1) (Appendix B, infra, pp. 27a-28a), the District Court may appoint an attorney for the complainant if it deems it just. One of the criteria which the courts have applied is some indication that the petitioner has made reasonable effort to retain an attorney on her own. Plaintiff obviously meets this criterion; however, her request for assistance was refused. Plaintiff, thus, has had to pursue this complex civil rights action pro se to her disadvantage. The imposition of a lawsuit such as this and the stances of the parties and Courts herein constitute an abuse of an individual's rights, person, and time.

CONCLUSION

For the reasons stated above, plaintiff submits that this appeal brings before the Court substantial and important Federal questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution, and that plaintiff should be allowed a meaningful hearing of the issues herein of which hearing she has been denied to date. The Second Circuit and District Courts improperly dismissed material issues of fact which should not have been decided on a motion to dismiss. The decisions of the Second Circuit and District Courts were in conflict with the many, consistently held decisions of this Court, of other Federal courts, and of the Second Circuit itself. Plaintiff should be allowed her day in court for her civil rights employment discrimination action.

The Court should take jurisdiction of this appeal.

WHEREFORE, plaintiff-petitioner

prays that a Writ of Certiorari issue from this Honorable Court to review the decision of the Court of Appeals for the Second Circuit.

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff-Appellant and
Petitioner
P. O. Box 1750
Brooklyn, NY 11201
(718) 875-6171

APPENDIX TO

JURISDICTIONAL STATEMENT AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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APPENDIX A

UNITED STATES COURT OF APPEALS
Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 31st day of March, one thousand nine hundred and eighty-six.

Present:

HONORABLE IRVING R. KAUFMAN,

HONORABLE WALTER R. MANSFIELD,

HONORABLE THOMAS J. MESKILL,

Circuit Judges.

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ALICE CLISSURAS, 85-9002

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK and LEWIS ROSENBERG,

Defendants-Appellants.

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Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

1. Clissuras filed a complaint pursuant to Title VII, claiming she was deprived of her full retirement pension because of her sex and religion. A Title VII action may be brought in federal court only if the plaintiff filed charges with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the alleged discrimination. 42 U.S.C. § 2000e-5(e). In New York State, which maintains an independent equal employment opportunity agency, a complainant must file charges

with the EEOC within 240 days of the alleged discrimination to allow the state agency 60 days to resolve the dispute. Mohasco Corp. v. Silver, 447 U.S. 807 (1980). Clissuras retired on September 11, 1983 (sic), and received her first pension check on January 2, 1983. She did not file discrimination charges with the EEOC until June 20, 1985. Accordingly, Clissuras is precluded from litigating her Title VII action in federal court because she failed to file charges with the EEOC within 240 days of the alleged discrimination.

2. We reject appellant's contention that her monthly receipt of the pension checks constituted a continuing violation, defeating the 240-day EEOC filing requirement. An alleged discrimination is not a continuing violation merely because it has continuing adverse effects on an employee's benefits. See United Airlines

Inc. v. Evans, 432 U.S. 553, 559 (1977).

3. We have carefully examined Clissuras's other claims and find them to be equally without merit.

4. Accordingly, the judgment of the district court is affirmed.

/s/
IRVING R. KAUFMAN,

/s/
WALTER R. MANSFIELD,

/s/
THOMAS J. MESKILL,
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited, or otherwise used in unrelated cases before this court or any other court.

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

85-9002

DATE	FILINGS - PROCEEDINGS
3/31/86	Judgment affirmed by detailed court order without opinion filed (IRK, WRM, TJM, C.JJ.)
	* * *
6/4/86	Order denying Appellant CLISSURAS Petition for Rehearing with Suggestion for rehearing in Banc filed (CLERK)
	* * *
6/20/86	Mandate (Judgment, Statement of Costs) Issued

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 4th day of June, one thousand nine hundred and eighty-six.

ALICE CLISSURAS,

Plaintiff-Appellant,

v. Docket No. 85-9002

CITY OF NEW YORK, et al.,

Defendants-Appellees.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by Plaintiff-Appellant, Alice Clissuras, pro-se,

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

/s/
Elaine B. Goldsmith
Clerk

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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ALICE CLISSURAS,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

JUDGMENT AND ORDER

CV 85-3180

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Plaintiff having brought this action for relief pursuant to Title VII of the Civil Rights Act and upon various state law theories;

Defendants City of New York, Teachers' Retirement Board of The City of New York, Teachers' Retirement System of the City of New York, Board of Higher Education of the City of New York, City University of New York, New York City Technical College, Department of Insurance of the State of New York, and Lewis Rosenberg having moved to dismiss for failure to state a claim upon which relief

may be granted and;

The motions to dismiss of defendants City of New York, Teachers' Retirement Board of the City of New York, Teachers' Retirement System of the City of New York, Board of Higher Education of the City of New York, City University of New York, New York City Technical College, Department of Insurance of the State of New York, and Lewis Rosenberg having been heard by this Court on November 14, 1985; and

Defendant Professional Staff Congress/ CUNY having appeared before this Court at oral argument on November 14, 1985; and

The Court having considered defendants' motions and the written briefs and, oral argument in support thereof as well as plaintiff's written and oral responses thereto; and

The Court having determined on the record that plaintiff's federal claims should

be dismissed on the merits as barred by the statute of limitations; and

The Court having ruled that no Constitutional violation exists; and

The Court having exercised its discretion in declining to extend its pendent jurisdiction over the state law claims; it is

ORDERED that the motions be and the same are hereby granted, and it is further

ORDERED, ADJUDGED and DECREED, that plaintiff's federal claims be dismissed on the merits, that plaintiff's state claims be dismissed without prejudice, that the defendants have and recover their costs, and that the complaint be dismissed as to all defendants.

Dated: New York, New York
December 12, 1985

SO ORDERED:

/s/ Jack B. Weinstein

U.S.D.J.

Pages 14-16 of the official transcript of record of motions to dismiss the complaint heard on November 14, 1985, before the Honorable Jack B. Weinstein, Chief Justice of the United States District Court for the Eastern District of New York:

* * *

THE COURT: The action is dismissed. In so far as it is a Title 7 action it is untimely.

Ms. CLISSURAS: Why is (it) untimely?

THE COURT: The additional claims with respect to state deprivation will not be dealt with in this court. The court exercises its discretionary --

Ms. CLISSURAS: What about my constitutional rights?

THE COURT: -- power to refuse to hear any of the pendant claims.

The plaintiff has not exhausted her state remedies, Article 78 and other provisions of the State law.

MS. CLISSURAS: Pardon me? Article 78?

THE COURT: And other provisions of the State law.

No constitutional violation is alleged.

MS. CLISSURAS: Why not -- I alleged civil rights discrimination as a female and as a Christian, and a conspiracy is part of the Civil Rights Act, and if you claim it under class origins then that joins

the defendants within that action.

THE COURT: I understand your position.

MS. CLISSURAS: All I have alleged for conspiracy is fraud.

THE COURT: I understand. The defendants also submit a judgment of dismissal.

If you wish to take an appeal you may take an appeal to the Court of Appeals to the Second Circuit.

MS. CLISSURAS: I would like to bring to your attention also that the default judgment was vacated by you without my ever being heard.

THE COURT: That is the normal practice in this court.

MS. CLISSURAS: I was told otherwise by your clerks. I was told that I would be allowed to make a motion on default and then I would be heard.

THE COURT: In any event, since I have dismissed the case on the merits there is no point in discussing.

All defendants are dismissed.

MS. CLISSURAS: You haven't even heard the other defendants.

THE COURT: I have heard, I have read the papers.

Thank you very much madam.

MS. CLISSURAS: This is really frightening, Your Honor.

I have never -- I would never believe in this country we have no rights. None at all.

THE COURT: I advise you, madam, to leave the courtroom.

MS. CLISSURAS: I am.

THE COURT: Or you will be held in contempt.

MS. CLISSURAS: I will. I will. I will.

THE COURT: Thank you.

NOTE: The entire transcript of record of the November 14, 1985, hearing appears on pages A.350-A.366 of Appendix for Plaintiff-Appellant, Alice Clissuras, which was filed with Plaintiff-Appellant's Brief on Appeal to the Court of Appeals for the Second Circuit.

CIVIL DOCKET
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CV 85-3180

DATE	NR.	PROCEEDINGS
11/14/85	--	Before Weinstein, Ch.J. Case called. All sides present. Pltff. pro-se present. Defts. City of N.Y., Teachers' Retirement Board of City of N.Y., Teachers' Retirement System of the City of N.Y. motion to dismiss the complaint for failure to state a claim-ARGUED-GRANTED-as to all defts. for reasons orally stated on the record. Pltff. has not exhausted state remedies. Deft. to submit Judgment of dismissal. Filed. (Ent'd 11/18/85).
		* * *
12/13/85	26	By Weinstein, Ch.J. Judgment and Order dtd. 12/12/85. Ordered that the motions be and the same are hereby granted and it is further Ordered that pltff.'s state claims be dismissed without prejudice, that the defts. have and recover their costs, and that the complaint be dismissed as to all defts. Filed (Ent'd 12/13/85). C/M.

APPENDIX B

Chapter 1 of the Federal Rules,

28 U.S.C. §1343(a), Civil Rights, provides:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Chapter 21 of the Federal Rules, 42 U.S.C. §1981, Civil Rights: Equal Rights Under the Law, provides:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Chapter 21 of the Federal Rules, 42 U.S.C. §1983, Civil Rights: Civil Action for Deprivation of Rights, provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Chapter 21 of the Federal Rules, 42 U.S.C. §1985, Civil Rights: Conspiracy to Interfere with Civil Rights, Sections (2) and (3) provide in relevant parts:

> "(2) * * * or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;
>
> "(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or

> or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

Chapter 21 of the Federal Rules, 42 U.S.C. §1986, Civil Rights: Action for Neglect to Prevent, provides in relevant part:

> "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; * * *."

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

§ 2000e-2. Unlawful employment practices

Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

§ 2000e-4. Equal Employment Opportunity Commission

Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

(a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than t..ree of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5.

General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e–5 and 2000e–6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

Powers of Commission

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e–5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

Cooperation with other departments and agencies in performance of educational or promotional activities

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

§ 2000e-5. Enforcement provisions

Power of Commission to prevent unlawful employment practices

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, had engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has ini-

tially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the

complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

Provisions of sections 101 to 115 of Title 29 not applicable to civil actions for prevention of unlawful practices

(h) The provisions of sections 101 to 115 of Title 29 shall not apply with respect to civil actions brought under this section.

Proceedings by Commission to compel compliance with judicial orders

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

Appeals

(j) Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

Attorney's fee; liability of Commission and United States for costs

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

Pub.L. 88–352, Title VII, § 706, July 2, 1964, 78 Stat. 259; Pub.L. 92–261, § 4, Mar. 24, 1972, 86 Stat. 104.

§ 2000e-6. Civil actions by Attorney General

Complaint

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Jurisdiction; three-judge district court for cases of general public importance; hearing, determination, expedition of action, review by Supreme Court; single-judge district court; hearing, determination, expedition of action

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the dis-

trict, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

(c) Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

(e) Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.

Pub.L. 88-352, Title VII, § 707, July 2, 1964, 78 Stat. 261; Pub.L. 92-261, § 5, Mar. 24, 1972, 86 Stat. 107.

§ 2000e-7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

Pub.L. 88–352, Title VII, § 708, July 2, 1964, 78 Stat. 262.

§ 2000e-8. Investigations

Examination and copying of evidence related to unlawful employment practices

(a) In connection with any investigation of a charge filed under section 2000e-5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

(c) Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this

subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

Prohibited disclosures; penalties

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

Pub.L. 88–352, Title VII, § 709, July 2, 1964, 78 Stat. 262; Pub.L 92–261, § 6, Mar. 24, 1972, 86 Stat. 107.

§ 2000e-9. Conduct of hearings and investigations pursuant to section 161 of Title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 shall apply.

Pub.L. 88-352, Title VII, § 710, July 2, 1964, 78 Stat. 264; Pub.L. 92-261, § 7, Mar. 24, 1972, 86 Stat. 109.

Rule 12 of the Federal Rules of Civil Procedure, Defenses and Objections, in §§(b) and (c), provides in relevant parts:

> (b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: * * * (6) failure to state a claim upon which relief can be granted, * * *. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. * * * If on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.
>
> (c) Motion for Judgment on the Pleadings. * * * If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Section 214(2) of the New York C.P.L.R. provides:

> The following actions must be commenced within three years:
>
> * * *
>
> 2. an action to recover upon a liability, penalty or forfeiture created or imposed by statute except as provided in sections 213 and 215.
>
> * * *

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT — Docket No. 85-9002

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, et al.,

Defendants-Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Alice Clissuras, the plaintiff-appellant above named, hereby appeals to the Supreme Court of the United States, from the order affirming dismissal of the complaint entered in this action on March 31, 1986, and from the order denying Petition for Rehearing in Banc entered in this action on June 4, 1986.

This appeal is taken pursuant to U.S.Const.Amend.5, Amend.14(1); 28 U.S.C. §1343(a), Civil Rights; 42 U.S.C. §§1981,

1983, 1985, 1986, 2000e, et seq., Civil Rights; Fed. R. Civ. P., Rule 12(b)(c), Defenses and Objections.

Dated: August 18, 1986.

/s/

ALICE CLISSURAS, pro se
Plaintiff-Appellant
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